**HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES**
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# HOUSE RESEARCH ORGANIZATION

## daily floor report

Tuesday, April 20, 2021
87th Legislature, Number 38
The House convenes at 10 a.m.
Part Two

Two bills are on the Major State Calendar and 27 bills are on the General State Calendar for second reading consideration today. The bills analyzed or digested in Part Two of today's *Daily Floor Report* are listed on the following page.

The following House committees were scheduled to meet today: Human Services; Public Education; General Investigating; Land and Resource Management; Business and Industry; Redistricting; Natural Resources; State Affairs; Insurance; County Affairs; and Transportation.

Alma Allen
Chairman
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**HOUSE RESEARCH ORGANIZATION**

Daily Floor Report

Tuesday, April 20, 2021

87th Legislature, Number 38

Part 2

SUBJECT: Extending deadline for teacher resignations in advance of the school year

COMMITTEE: Public Education — committee substitute recommended

VOTE: 12 ayes — Dutton, Lozano, Allen, Allison, K. Bell, Bernal, Buckley, Huberty, K. King, Meza, Talarico, VanDeaver

0 nays

1 absent — M. González

WITNESSES: For — Laura Kravitz, Texas State Teachers Association; (*Registered, but did not testify*: Andrea Chevalier, Association of Texas Professional Educators; Dena Donaldson, Texas AFT; Pamela McPeters, Texas Classroom Teachers Association; Thomas Parkinson)

Against — (*Registered, but did not testify*: Grover Campbell, TASB; Barry Haenisch, Texas Association of Community Schools; Amy Beneski, Texas Association of School Administrators)

On — (*Registered, but did not testify*: Laura Moriaty and David Rodriguez, Texas Education Agency)

BACKGROUND: Education Code sec. 21.033 establishes the State Board for Educator Certification as a 15-member board that includes four teachers, two school administrators, one school counselor, and four citizens. Three of the four citizen members must not have been employed by a school district or an educator preparation program in an institution of higher education in the five years preceding appointment and the fourth citizen member must not have been employed by a district or educator preparation program.

DIGEST: CSHB 2519 would change the composition of the 15-member State Board for Educator Certification (SBEC) to include representatives of small and mid-size districts. The bill would revise the deadline for teachers under contract with a school district to resign without penalty before the start of a school year and change SBEC requirements to notify a teacher regarding a complaint or suspension.

**Board composition.** The bill would require at least two of the seven public school employee members of SBEC to be from a district eligible for the small and mid-sized district allotment. Public school employee members serving on the board immediately before CSHB 2519 became effective would continue carrying out their duties for the remainder of their terms. The governor would have to appoint members who meet the bill's requirements, if necessary, on the first two vacancies that occurred after the effective date of the bill.

**Resignations.** CSHB 2519 would change the deadline for a teacher employed under a probationary, continuing, or term contract to resign without penalty from not later than the 45th day before the first day of instruction of the following school year to the 30th day. The deadline change would apply beginning with the resignation of a teacher who intended to leave a district's employment at the end of the 2021-2022 school year.

*Complaints and sanctions.* If a school district submitted a complaint regarding a teacher under a probationary, continuing, or term contract who resigned or failed to comply with the resignation deadline or failed to perform the contract, the district would be required to promptly notify the teacher of the complaint. The notice would have to include the basis of the complaint, information regarding how the teacher could contact SBEC, and a reminder that the teacher should verify that the teacher's current address is on file with the agency.

Before imposing sanctions against a teacher who resigned, SBEC would have to consider any mitigating factors relevant to the teacher's conduct and could consider alternatives to sanctions, including additional continuing education or training.

**Notice of suspension.** The bill would require SBEC to promptly notify a teacher of a suspension of the teacher's certificate or permit by certified mail. A "teacher" would be defined as a superintendent, principal, supervisor, classroom teacher, school counselor, paraprofessional, or other full-time professional employee who is required to hold a certificate. The notice would have to include the basis for the suspension and information

regarding the method in which the teacher could respond to the suspension.

The bill's notice requirements would apply only to a complaint or a suspension that occurred on or after the effective date. Its requirement for SBEC to consider mitigating factors would apply only to a disciplinary proceeding initiated by SBEC on or after the effective date.

The bill would take effect September 1, 2021.

SUPPORTERS SAY:

CSHB 2519 would address concerns that some teachers are being wrongly sanctioned for abandoning their contracts when they resign too close to the start of a school year or miss a notification that a district had complained about their resignation date. The bill would give teachers an extra 15 days to submit their resignations before school begins and ensure they received notice if a district filed a complaint with the State Board for Educator Certification (SBEC) over the timing of a resignation.

At a time when too many teachers are leaving the profession because of the COVID-19 pandemic, the bill would prevent SBEC from punishing qualified and respected teachers for minor administrative errors. In some cases, teachers have moved and missed receiving notification of a complaint or suspension related to their resignation date. This has resulted in a default judgment that bans them from working for a Texas public school for one year. Unable to work in their chosen profession, some educators have found a new line of work and never returned to teaching.

The bill also would ensure that SBEC considers the circumstances or mitigating factors of each case and can issue a more positive response such as mandatory training or professional education. This would distinguish administrative mistakes from more serious offenses for which a teacher's certification could be suspended or revoked.

A two-week resignation notice is standard practice in the business world. The bill's requirement for a 30-day notice would provide sufficient time in most cases for a district to replace a departing educator.

CRITICS SAY:

CSHB 2519 could make it more difficult for school districts to ensure that each classroom has a teacher when school starts in August. It has been a requirement since 1995 that teachers resign no later than 45 days before the start of the school year. Shortening that time to 30 days fails to take into account that teachers generally must report for duty two weeks in advance of classes starting. District leaders would have insufficient time to post notice and interview candidates. It could be particularly difficult to replace teachers in certain subjects or in a rural school district because of shortages of qualified teachers in those areas.

SUBJECT: Amending administration provisions in Medicaid managed care program

COMMITTEE: Human Services — committee substitute recommended

VOTE: 8 ayes — Frank, Hinojosa, Hull, Klick, Meza, Neave, Noble, Shaheen

0 nays

1 present not voting — Rose

WITNESSES: For — James Whittenburg, Longhorn Health Solutions; Kay Ghahremani, Texas Association of Community Health Plans; Laurie Vanhoose, Texas Association of Health Plans; Chris Yule, Travis Medical; Leah Rummel, UnitedHealthcare; (*Registered, but did not testify*: Lawrence Collins, Amerigroup (Anthem); Marisa Finley, Baylor Scott & White Health; Patricia Kolodzey, Blue Cross Blue Shield of Texas; Michael Dole, Driscoll Health Plan; Jessica Boston, Molina Healthcare Inc; Eric Knustrom, Private Providers Association of Texas; Karen Cheng, Superior Heath Plan; Gregg Knaupe, Texas Association For Home Care & Hospice; Lee Johnson, Texas Council of Community Centers; Ashley Ford, The Arc of Texas)

Against — John Culberson, American Association for Home Care; Rebecca Galinsky, Protect TX Fragile Kids; Hannah Mehta, Protect TX Fragile Kids; Adrienne Trigg, Texas Medical Equipment Providers; Susan Burek; (*Registered, but did not testify*: Josh Fultz, Protect Texas Fragile Kids)

On — Gary Siller, American Association for Home Care; Linda Litzinger, Texas Parent to Parent; (*Registered, but did not testify*: Stephanie Stephens, Health and Human Services Commission)

BACKGROUND: Government Code sec. 533.055 requires a contract between a Medicaid managed care organization (MCO) and the Health and Human Services Commission to include capitation rates that ensure the cost-effective provision of quality health care.

Sec. 533.0063(b) requires, with some exceptions, an MCO to provide a paper copy of the organization's provider network directory to a recipient upon request. Sec. 533.0063(c) requires an MCO participating in the STAR + PLUS or STAR Kids Medicaid managed care program to issue a paper copy of a provider network directory unless the recipient opts out of receiving the directory in paper format.

Human Resources Code sec. 32.025(g) requires the application form for Medicaid to include:

- for an applicant who is pregnant, a question regarding whether the pregnancy is the woman's first gestational pregnancy; and
- a question regarding the applicant's preferences for being contacted.

DIGEST:

CSHB 2658 would amend Medicaid managed care provisions on capitation rates, provider network directories in paper form, and Medicaid application forms.

**Capitation rates.** The bill would add a provision to the capitation rates required in a contract between a Medicaid managed care organization (MCO) and the Health and Human Services Commission (HHSC). The capitation rates would have to include acuity and risk adjustment methodologies that considered the costs of providing acute care services and long-term services and supports, including private duty nursing services, provided under the plan.

To the extent permitted by the terms of the contract, HHSC would have to seek to amend a contract with an MCO entered into before the bill's effective date to comply with the required capitation rates under the bill.

**Provider network directory.** If a recipient requested to receive the provider network directory in paper form, the bill would require the MCO to mail the most recent paper directory by the fifth business day after the recipient's request was received.

The bill would amend Government Code sec. 533.0063(c) by requiring, at least annually, an MCO to include in the organization's outreach efforts

and educational materials a written or verbal offer allowing each recipient enrolled in the managed care plan to elect to receive the organization's provider network directory, including any directory updates, in paper form.

**Medicaid application form.** The Medicaid application form under Human Resources Code sec. 32.025(g) would have to include an option for an applicant who could be enrolled in a Medicaid managed care plan. The option would allow an applicant to elect to receive the plan's provider network directory in paper form, including any directory updates.

As soon as practicable after the bill's effective date, HHSC would have to adopt the revised application form under Human Resources Code sec. 32.025(g).

The bill would take effect September 1, 2021, and would apply only to a contract between HHSC and an MCO that was entered into or renewed on or after the bill's effective date.

SUPPORTERS SAY:

CSHB 2658 would reduce financial uncertainty and administrative complexity in the Medicaid managed care program. The bill would improve the way in which the capitation rate, or the rate at which Medicaid managed care providers are reimbursed, is determined by requiring the rate to include a risk adjustment in Medicaid payments in order to better support the needs of patients with increased acuity, or with more intensive care needs. This change would help avoid situations where managed care organizations (MCOs) leave Medicaid because of insolvency.

The bill also would improve efficiency in Medicaid managed care by requiring MCOs to send a paper copy of provider directories only if enrollees requested it. Currently, paper directories are automatically sent to enrollees, resulting in the information quickly becoming outdated as providers leave or enroll in Medicaid. The bill would ensure those who wish to receive paper copies could still opt in to receive them during Medicaid enrollment.

Concerns about the bill as filed were addressed in the committee substitute by removing the provision that would have required the Health and Human Services Commission to honor a contract requirement enabling a managed care organization to make the initial and subsequent primary care provider assignments and changes in accordance with state law.

CRITICS SAY:

No concerns identified.

SUBJECT: Modifying certain procedures for parental child safety placements

COMMITTEE: Human Services — favorable, without amendment

VOTE: 5 ayes — Frank, Hull, Klick, Noble, Shaheen

3 nays — Hinojosa, Meza, Rose

1 absent — Neave

WITNESSES: For — Judy Powell, Parent Guidance Center; Julia Hatcher, Texas Association of Family Defense Attorneys (TAFDA); Andrew Brown, Texas Public Policy Foundation; Maureen Ball; (*Registered, but did not testify*: Rebecca Galinsky and Adrienne Trigg, Protect TX Fragile Kids; Meagan Corser, Texas Home School Coalition; Ashley Pardo)

Against — None

On — Marta Talbert, Department of Family and Protective Services; (*Registered, but did not testify*: Angie Voss, Department of Family and Protective Services; Thomas Parkinson)

BACKGROUND: Family Code sec. 264.901 defines a parental child safety placement (PCSP) as a temporary, out-of-home placement of a child with a caregiver made by a parent or other person with whom the child resides in accordance with a written parental child safety placement agreement approved by the Department of Family and Protective Services (DFPS) that ensures the safety of the child:

- during an investigation by DFPS of alleged abuse or neglect of the child; or
- while the parent or other person is receiving services from the department.

Family Code sec. 264.902 requires that a PCSP agreement include certain terms clearly stating the respective duties of the person making the placement and the caregiver, the conditions under which the person

making the placement may have access to the child, the duties of DFPS, the date on which the agreement will terminate subject to certain DFPS policies, and any other term the department determines necessary for the safety and welfare of the child.

Under Family Code sec. 264.203, a court on the request of DFPS can order a parent, managing conservator, guardian, or other member of the subject child's household to participate in or to permit the child and any siblings in the house to receive certain services related to abuse or neglect. If the person ordered to participate in the services fails to follow the court's order, the court may impose appropriate sanctions, including the removal of the child.

Family Code sec. 263.0061 establishes the right to counsel for parents involved in a status hearing or permanency hearing held after the date the court renders a temporary order appointing the department as temporary managing conservator of a child, including the right to a court-appointed attorney if a parent is indigent.

DIGEST:

HB 2680 would modify certain procedures concerning parental child safety placements (PCSPs), including required PCSP agreement terms, the right to counsel in certain situations, and reporting requirements.

The bill would require a PCSP agreement to include a term that clearly stated the agreement would automatically terminate on the earlier of the 30th day after the date the agreement was signed or the child was placed with the caregiver.

If a child was subject to a PCSP, before the court could order a parent, managing conservator, guardian, or other member of the child's household to participate in services, the court would be required to advise anyone without an attorney of their right to be represented by an attorney, and if the person was indigent and opposed the court order, to advise the person of their right to a court-appointed attorney.

DFPS would be required to include children who are placed with a caregiver under a PCSP agreement in any report in which the department was required to disclose the number of children in the child protective

services system who were removed from their homes, including in reports submitted to the U.S. Department of Health and Human Services or other federal agencies. If a child was placed with a caregiver under a PCSP, DFPS also would be required to report the number of cases in which a court ordered the parent, managing conservator, guardian or other member of the subject child's household to participate in services.

The bill would take effect September 1, 2021.

SUPPORTERS SAY:

HB 2680 would provide necessary safeguards and oversight for families subject to parental child safety placements (PCSPs) by limiting the duration of PCSP agreements and by requiring the Department of Family and Protective Services (DFPS) to report new data tracking PCSPs to both state and federal governmental entities.

PCSPs were originally intended to balance the safety needs of a child during abuse and neglect investigations with minimizing the trauma associated with governmental removal of the child from their home. Families undergoing DFPS investigations can be asked to place their child with another trusted individual known by the child during the investigation or while the family is receiving services addressing the alleged abuse or neglect. However, there are concerns that PCSPs are influencing families into temporarily giving up their children for open-ended lengths of time during DFPS investigations with the threat of state action for noncompliance with the PCSP agreement.

HB 2680 would allow DFPS to continue using PCSP agreements as an important tool to prevent removals but would add the needed transparency, oversight, and time limitations for these agreements to work properly for the families. It would require DFPS to make a decision on whether to open a case for the child under the PCSP agreement within 30 days of placement of the child with the caregiver or the signing of the agreement, whichever was less.

Under the bill, families would be empowered to question decisions of DFPS with the assurance of access to a court-appointed attorney should any disagreements arise. Thirty days should be sufficient for DFPS to make a determination on whether a child is at high risk of abuse or neglect warranting a government removal of the child. After termination of a

PCSP agreement in which DFPS did not find a high risk or danger, DFPS could continue providing services to the families without the threat of removal of the child dictating decisions and participation in services.

The separation or removal of a child from their family is one of the most drastic measures that the state can impose on a family, and oftentimes the most marginalized Texans are the families subject to these separations or removals. The bill would help ensure that children were not away from their families for longer than necessary. The bill's reporting provisions would provide transparency, revealing clear and actionable data that Texas needs in order to make improvements.

CRITICS SAY:

Limiting parental child safety placement (PCSP) agreements to 30 days may not provide DFPS with adequate time to determine if a family had made the necessary behavioral changes for a child to go home, resulting in multiple or premature governmental removals, which are traumatic for all parties involved. In 2020, the average length of time for children in a PCSP placement was four months. Mandating termination of a PCSP agreement after only 30 days could encourage more removals out of an overabundance of caution based on an inability to determine risk level to the child within that time frame or on an inability to determine whether necessary behavioral improvements in family members were made.

There also are concerns regarding the increase in DFPS resources that would likely be necessary due to the expected increase in governmental removals of children. There would likely be increased resource needs for relative caregivers or other designated caregivers who receive money from the state, for paid foster care, and for full-time equivalents for the department.

NOTES:

According to the Legislative Budget Board, the bill would have a negative impact of about $34.7 million to general revenue related funds through fiscal 2022-23.

SUBJECT: Prohibiting certain covenants in architectural and engineering contracts

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 6 ayes — Leach, Julie Johnson, Krause, Middleton, Schofield, Smith

0 nays

3 absent — Davis, Dutton, Moody

WITNESSES: For — Peyton McKnight, American Council of Engineering Companies of Texas; (*Registered, but did not testify*: John T. Montford, Jacobs Global Engineering; Richard Lawson, Structural Engineers Association of Texas; Becky Walker, Texas Society of Architects)

Against — Shannon Ratliff, Texas Association of Manufacturers and Texas Oil & Gas Association; (*Registered, but did not testify*: Jamaal Smith, City of Houston Office of the Mayor Sylvester Turner; Daniel Collins, County of El Paso; Daniel Womack, Dow, Inc.; Thamara Narvaez, Harris County Commissioners Court; Blaire Parker, San Antonio Water System (SAWS); Hector Rivero, Texas Chemical Council; Jay Brown, Valero Energy Corporation)

BACKGROUND: Civil Practice and Remedies Code sec. 130.002(b) makes a covenant or promise in a construction contract void and unenforceable if the covenant or promise provides for a registered architect or licensed engineer whose services are the subject of the contract to indemnify or hold harmless an owner or owner's agent or employee from liability from damage that is caused by or results from the negligence of an owner or an owner's agent or employee. Sec. 130.004 provides general exemptions for owners of an interest in real property or persons employed solely by that owner from statutory provisions related to liability provisions in certain construction contracts, except as provided by sec. 130.002(b).

DIGEST: CSHB 2116 would impose restrictions on the covenants that could be included in, connected to, or collateral to construction contracts for engineering or architectural services related to the improvement of real

property, and would establish a required standard of care for the architectural or engineering services provided in relation to such contracts.

**Covenants**. A covenant in connection with such contracts would be void and unenforceable if it required a licensed engineer or registered architect to defend any party, including a third party, against a claim based wholly or in part on the negligence of, fault of, or breach of contract by the owner or an entity over which the owner exercised control. A covenant could provide for the reimbursement of an owner's reasonable attorney's fees in proportion to the engineer's or architect's liability. These provisions related to covenants would not apply to a contract for design-build services in which an owner contracted with a single entity to provide both design and construction services.

An owner that was a party to a contract under the bill could require that the owner be named as an additional insured under the engineer's or architect's commercial general liability insurance policy and be provided with any defense available to a named insured under the policy.

**Standard of care.** Construction contracts for architectural or engineering services or contracts related to the construction or repair of an improvement to real property that contained such services as a component part would have to require that the services be performed with the professional skill and care ordinarily provided by competent architects or engineers practicing under the same or similar circumstances and professional license. A provision in a contract that established a different standard of care would be void and unenforceable, and the standard of care provided in the bill would apply to the performance of the architectural or engineering services.

**Other provisions.** The restrictions on covenants and the standard of care required by the bill would apply to an owner of interest in real property or a person employed solely by that owner regardless of the general exemptions for those parties from statutory provisions related to liability provisions in certain construction contracts.

The bill would take effect September 1, 2021, and would apply only to a covenant or contract entered into on or after that date.

SUPPORTERS SAY:

CSHB 2116 would protect design professionals from uninsurable risk by prohibiting duty-to-defend provisions in design contracts and by requiring a realistic, insurable standard of care for design professionals.

Many architectural and engineering contracts contain duty-to-defend provisions that require the design professional to defend against third-party claims of the owner's alleged liability. These provisions can sometimes be triggered even if the design professional was not at fault and the claim was based solely on the owner's negligence. Defending such claims gives rise to costs that may not be covered by professional liability insurance policies, leading to design professionals paying out of pocket for the owner's legal bills before a determination of liability is made. CSHB 2116 would help prevent this by rendering duty-to-defend provisions void and unenforceable in construction contracts for engineering or architectural services.

Design contracts also would be prohibited from requiring design professionals to provide services at an uninsurable and unreasonable standard of care exceeding that ordinarily provided by competent architects or engineers practicing under the same or similar circumstances and professional license. Insurable standards of care and contract specifications are beneficial to both the design professionals and the owner, as litigation surrounding construction contracts is often complex, involving multiple parties and interests.

The bill would preserve the rights of parties to negotiate the terms of design contracts while balancing the bargaining positions of the parties so that design professionals were not required to assume most of the risk associated with a project, ensuring fair and reasonable construction contracts.

CRITICS SAY:

CSHB 2116 would apply a one-size-fits-all approach to construction contracts with architects and engineers, which could negatively impact owners in complex projects.

The bill could undermine owners' ability to maintain a coordinated defense in litigation involving construction and design defects in complex

projects by depriving companies of the right to include a duty-to-defend provision in contracts with architects and engineers. Such provisions are essential to making sure that all of the parties to the contract for a complex project are on the same page in the event of such litigation.

Design has become a collaborative enterprise, usually involving multiple parties working on complex projects together. While duty-to-defend provisions may be unfair in contracts involving smaller architectural or engineering firms with less bargaining power, more complex projects usually involve bigger firms that are capable of negotiating for themselves.

SUBJECT: Prohibiting disclosure of water utility customer information

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 12 ayes — Paddie, Hernandez, Deshotel, Harless, Howard, P. King, Lucio, Metcalf, Raymond, Shaheen, Slawson, Smithee

0 nays

1 present not voting — Hunter

WITNESSES: For — Donovan Burton, San Antonio Water System; (*Registered, but did not testify*: Brie Franco, City of Austin; Tammy Embrey, City of Corpus Christi; Kate Goodrich, City of Denton; TJ Patterson, City of Fort Worth; Christine Wright, City of San Antonio; Kari Meyer, CPS Energy; Bill Kelly, City of Houston Mayor's Office; Randy Lee, San Antonio Water System; Monty Wynn, Texas Municipal League; Russell T. "Russ" Keene, Texas Public Power Association; Thomas Parkinson)

Against — None

DIGEST: CSHB 872 would except from public information disclosure requirements certain customer information maintained by a government-operated utility that provides water, wastewater, sewer, gas, garbage, electricity, or drainage services. The bill would change the nature of confidentiality provisions under current law for customers of a government-operated utility from a system under which the customer must request confidentiality to a system under which the assumption would be confidentiality unless the customer requests disclosure.

Information that would be excepted from disclosure would include:

- information that was collected as part of an advanced metering system for usage, services, and billing, including amounts billed or collected for utility usage; or

- information that revealed whether an account was delinquent or eligible for disconnection or that services had been disconnected by the government-operated utility.

A government-operated utility would be required to disclose information collected as part of an advanced metering system to a customer of the utility or a designated representative of the customer on written request if the information directly related to utility services provided to the customer and was not confidential under law. An "advanced metering system" would be defined as a utility metering system that collected data at regular intervals through the use of an automated wireless or radio network.

CSHB 872 would amend disclosure requirements under Utilities Code sec. 182.052 to prevent a government-operated utility from disclosing personal information in a customer's account record unless the customer requested it be disclosed. A government-operated utility could disclose information related to the customer's volume or units of utility usage per billing cycle if the primary source of water for the utility was a sole-source designated aquifer.

A government-operated utility would have to include with a customer's bill or post on its website a notice of the customer's right to request disclosure and a disclosure form. A customer could rescind a request for disclosure by providing a written request to withhold the customer's personal information beginning on the date the utility received the request.

A municipally owned water utility could not disclose the address of the ratepayer unless the ratepayer had requested disclosure.

The bill would repeal a section of the Utilities Code authorizing a government-operated utility to charge a fee to a customer who requests confidentiality.

The bill would apply only to a request for public information received by a governmental body or officer for public information on or after the effective date of the bill.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2021.

SUPPORTERS SAY:

CSHB 872 would strengthen privacy for customers of government-owned water utilities by exempting from open records requests personal information about whether a customer's account was delinquent or eligible for disconnection. This information has been increasingly sought by entities that use it to market predatory loans or contact a homeowner with offers to buy their property.

Certain municipal water utilities have seen a significant increase in requests for personal information about customers who are behind on their water bills and slated for having their water shut off. Many of these customers are experiencing financial difficulties, including job losses related to the pandemic. Their inability to pay their water bills should not make them the target of someone trying to buy their home at an under-market price.

CSHB 872 would put municipal water utilities in line with municipal electric utilities in their ability to withhold customer information. Government Code currently allows electric utilities to withhold information about customer billing, contract, and usage as a "competitive matter."

Advanced metering that delivers a customer's water usage on an hourly basis can help utilities manage their resources more efficiently. But that information, if publicly disclosed, could be used by a nefarious actor to track a person's water use to find out when they might be away from their home. The bill would protect this detailed data from being disclosed through an open records request while ensuring that a customer still could obtain the data related to their account.

A water customer who believed they had been overcharged could opt to publicly disclose their account information to assist with a news media report.

CRITICS SAY:

CSHB 872 could interfere with journalists working to spotlight customers who were using excessive amounts of water, particularly during a drought. Keeping water use information confidential also could hamper the ability of news reporters to investigate a complaint by a customer of being overcharged for their water use.

While the bill is targeted at keeping investors who buy distressed properties from using water shutoff information as a source for leads, these investors can be an important resource for homeowners experiencing financial difficulties who need to quickly sell their home or delay a foreclosure.

SUBJECT: Requiring legal representation for certain foster care youth

COMMITTEE: Juvenile Justice and Family Issues — favorable, without amendment

VOTE: 9 ayes — Neave, Swanson, Cook, Frank, Leach, Ramos, Talarico, Vasut, Wu

0 nays

WITNESSES: For — Kerrie Judice, Tex Protects; Gabriella McDonald, Texas Appleseed; Julia Hatcher, Texas Association of Family Defense Attorneys; Sarah Crockett, Texas CASA; (*Registered, but did not testify*: Maggie Luna, Statewide Leadership Council; Molly Weiner, United Ways of Texas; Knox Kimberly, Upbring; Michele Nigliazzo; Cecilia Wood)

Against — None

On — Jimmy Vaughn; (*Registered, but did not testify*: Carol Self, Department of Family and Protective Services)

BACKGROUND: Under Family Code sec. 107.016 governing continued representation for a child under the conservatorship of the Department of Family and Protective Services, an order appointing the department as the child's managing conservator may provide for the continuation of the appointment of the guardian ad litem for the child for any period during the time the child remains in the conservatorship.

DIGEST: HB 1315 would require an order appointing the Department of Family and Protective Services (DFPS) as a child's managing conservator to provide for the continuation of the appointment of the guardian ad litem or attorney ad litem for the child, or an attorney appointed to serve in the dual role, for the duration of the child's time in DFPS conservatorship.

The bill would take effect September 1, 2021, and would apply to a suit affecting the parent-child relationship filed before, on, or after the effective date.

SUPPORTERS SAY:

HB 1315 would improve outcomes for children in long-term foster care by requiring the child be represented by a guardian ad litem or attorney ad litem for as long as they are in conservatorship.

Current family law does not require children in long-term foster care, also known as permanent managing conservatorship (PMC), to have a legal advocate by their side when they appear in court. As a result, children in PMC often are left to face the unfamiliar courtroom environment alone.

Hearings can be confusing and stressful for children. A study of foster youth involved in the court system showed they experienced PTSD at rates similar to war veterans. By contrast, children who had representation were more likely to get timely hearings, be engaged in court proceedings, and had better outcomes than those who did not. After enacting a policy requiring legal representation for foster youth, one Texas county saw a 57 percent reduction of children in PMC, compared to a 15 percent reduction statewide. The children also experienced higher rates of reunification with their families and legal guardianship.

HB 1315 would improve outcomes for the more than 24,000 children currently under PMC in Texas by ensuring they had legal representation for as long as they are in the foster care system.

CRITICS SAY:

No concerns identified.

SUBJECT: Expanding circumstances for DIR to negotiate IT cooperative contracts

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 13 ayes — Paddie, Hernandez, Deshotel, Harless, Howard, Hunter, P. King, Lucio, Metcalf, Raymond, Shaheen, Slawson, Smithee

0 nays

WITNESSES: For — (*Registered, but did not testify*: Bill Kelly, City of Houston Mayor's Office; Hope Osborn, Texas 2036; Thomas Parkinson)

Against — None

On — (*Registered, but did not testify*: Hershel Becker, Texas Department of Information Resources)

BACKGROUND: Government Code sec. 2157.068 requires the Department of Information Resources (DIR) to negotiate with vendors to obtain the best value for the state in the purchase of commodity items. "Commodity items" means commercial software, hardware, or technology services that are generally available to businesses or the public and for which DIR determines that a reasonable demand exists in two or more state agencies.

Entities other than state agencies are allowed to purchase commodity items through DIR, including political subdivisions, governmental entities of other states, private schools and institutions of higher education, volunteer fire departments, hospitals, and public safety entities.

Under sec. 2157.182, preapproved contract terms and conditions to which a vendor, the comptroller, and DIR agree are valid for two years and must be renegotiated before the end of the two years.

DIGEST: HB 1380 would expand the circumstances under which the Department of Information Resources could negotiate with vendors to obtain the best value for the purchase of commodity items. Under the bill, DIR could take such action when a reasonable demand existed from two or more

customers, rather than two or more state agencies. Customers could include state agencies, political subdivisions, governmental entities of another state, and other listed entities that purchased items through DIR.

Under the bill, the preapproved terms and conditions to which a vendor, the comptroller, and DIR agreed would be valid for the duration of the initial contract, rather than for two years, and could be renegotiated at any time before the contract expired.

The bill would take effect September 1, 2021.

SUPPORTERS SAY:

HB 1380 would enhance the Department of Information Resource's (DIR) cooperative contracts purchasing program by allowing DIR to expand the discounted products it offered and generate additional state revenue.

Under current law, a list of eligible customers, including local governments, institutions of higher education and public schools, and governmental entities from another state, may purchase IT products and services that DIR has pre-negotiated at a discounted rate through its cooperative contracts program. However, DIR only can offer products and services in demand by two or more state agencies, limiting the products and services offered through the program. For example, some products may appeal to other eligible customers but appeal to only one state agency, and under current law DIR could not offer these products since the demand did not come from more than one state agency.

In addition, the bill would allow DIR to renegotiate contracts in the cooperative contracts program at any time, which would allow contract terms to be updated with changing cybersecurity, state agency, and legislative requirements.

CRITICS SAY:

No concerns identified.

SUBJECT: Allowing foster parents to store locked guns without trigger lock

COMMITTEE: Human Services — favorable, without amendment

VOTE: 5 ayes — Frank, Hull, Klick, Noble, Shaheen

4 nays — Hinojosa, Meza, Neave, Rose

WITNESSES: For — None

Against — Gyl Switzer, Texas Gun Sense; (*Registered, but did not testify*: Alison Mohr Boleware, National Association of Social Workers-Texas Chapter; Nancy Walker, Texans Care for Children; Eric Woomer, Texas Pediatric Society; Thomas Parkinson)

On — (*Registered, but did not testify*: Julie Richards, Texas Health and Human Services Commission)

BACKGROUND: Human Resources Code sec. 42.042(e-1) bars the Health and Human Services Commission from prohibiting the possession of lawfully permitted firearms and ammunition in an agency foster home. The commission is authorized to adopt minimum standards relating to safety and proper storage of firearms and ammunition. The minimum standards must allow firearms and ammunition to be stored separately or stored together in the same locked location if the firearms are stored with a trigger locking device attached to the firearms.

Sec. 42.002(11) defines an "agency foster home" as a facility that provides care for not more than six children for 24 hours a day, is used only by a licensed child-placing agency or continuum-of-care residential operation, and meets Department of Family and Protective Services standards.

DIGEST: HB 1387 would require the Health and Human Services Commission to allow agency foster homes to store firearms and ammunition together in the same locked location while removing a requirement that the minimum standards require a trigger lock attached to the firearm.

The bill would take effect September 1, 2021.

SUPPORTERS SAY:

HB 1387 would help ensure that foster children can be housed in a protected environment by eliminating an unnecessary statutory restriction on how foster parents store firearms. Current law requires that the standards established by the HHSC require firearms stored with ammunition to have a trigger lock. This is overly restrictive and could prevent a foster parent from having timely access to a firearm if one were needed.

There is a need for willing, qualified adults to care for children in the foster system, and it is counterproductive to have such strict regulations on lawful gun owners. Keeping firearms and ammunition locked up would be sufficient to ensure the safety of children in the home.

CRITICS SAY:

HB 1387 would remove requirements that help keep foster children as safe as possible from the risk of gun violence. Foster parents must meet numerous requirements to provide a safe home for foster children, and the current requirement to have standards requiring trigger locks when guns are stored with ammunition is another of these reasonable criteria. The bill would move Texas further from national foster home safety standards and other best practices for gun storage.

Foster children often have experienced trauma and their care should be in the context of providing a safe environment. Storing firearms and ammunition together without trigger locks or other safety mechanisms such as a biometric identifier in a locked location can result in unintentional shootings and suicides. Accessibility of firearms and ammunition should not come at the expense of safety.

SUBJECT: Temporarily expanding alternative method for high school graduation

COMMITTEE: Public Education — committee substitute recommended

VOTE: 12 ayes — Dutton, Lozano, Allen, Allison, K. Bell, Bernal, Buckley, Huberty, K. King, Meza, Talarico, VanDeaver

0 nays

1 absent — M. González

WITNESSES: For — Eduardo Hernandez, Bexar County Education Coalition and Edgewood ISD; Theresa Trevino, Texans Advocating for Meaningful Student Assessment; Michael Lee, Texas Association of Rural Schools; Kevin Brown, Texas Association of School Administrators; (*Registered, but did not testify*: Andrea Chevalier, Association of Texas Professional Educators; Dennis Borel, Coalition of Texans with Disabilities; Steven Aleman, Disability Rights Texas; Chloe Latham Sikes, Intercultural Development Research Association (IDRA); Grover Campbell, TASB; Dena Donaldson, Texas AFT; Barry Haenisch, Texas Association of Community Schools; Pamela McPeters, Texas Classroom Teachers Association; Kristin McGuire, Texas Council of Administrators of Special Education; Ana Ramon, Texas Legislative Education Equity Coalition; Suzi Kennon, Texas PTA; Dee Carney, Texas School Alliance; Carrie Griffith, Texas State Teachers Association (TSTA); Ashley Ford, The Arc of Texas; Greg Gibson, Texas Association of Midsize Schools)

Against — None

On — (*Registered, but did not testify*: Eric Marin and Monica Martinez, Texas Education Agency)

BACKGROUND: Education Code sec. 28.0258 requires school districts and charter schools to establish an individual graduation committee for students in grades 11 or 12 who have failed to pass one or two of the five end-of-course exams required for graduation. A student must successfully complete the

required curriculum and additional requirements established by the committee to be recommended for graduation.

DIGEST:

CSHB 999 would authorize all 12th grade students for the 2020-2021, 2021-2022, and 2022-2023 school years who had failed to pass one or more end-of-course exams required for graduation to be awarded a high school diploma by an individual graduation committee review. A committee, in determining whether a student was qualified to graduate, would not be required to consider criteria related to the student's performance on an end-of-course exam on which the student failed to perform satisfactorily.

The bill's provisions would expire September 1, 2023.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2021.

SUPPORTERS SAY:

CSHB 999 would provide a path to graduation for high school students whose efforts to pass the end-of-course exams required for graduation have been impacted by the pandemic. It would expand the individual graduation committee alternative for the current school year and the next two school years for students who failed to pass one or more of their exams.

The bill would recognize the impact of the COVID-19 pandemic on the ability of some students to return to in-person learning. This has resulted in lost opportunities for students to try to re-take and pass their required exams. In addition, many high school students are dealing with stress and trauma, with some juggling jobs and caring for siblings. The bill would apply to this year's sophomores and juniors as well as seniors to account for missed re-testing opportunities for students at each of those levels.

Some students, especially those with language barriers, testing anxiety, or learning disabilities, may have completed their coursework and should have an opportunity to demonstrate they have mastered a subject for which they failed to pass the end-of-course exam. Graduation committees have been proven to be an effective method for considering the entirety of

a student's work by assigning additional remediation as well as the completion of a project or portfolio in the relevant course.

The commissioner of education has removed the high stakes attached to STAAR for students in grades 5 and 8 by waiving grade promotion requirements related to their test scores, but the commissioner was unable to waive statutory graduation requirements for high school students. CSHB 999 would ensure that students of all grade levels are treated equally regarding STAAR requirements.

The graduation committee process is designed to ensure that students have obtained the requisite knowledge in the basic subjects covered by end-of-course exams. This allows them to receive their diploma and move on to college or the workforce.

CRITICS SAY:

CSHB 999 would result in STAAR exams being less important to graduating high school without having data to show that students who graduate using the individual graduation committee alternative are doing as well as their peers after high school. It is unclear whether allowing students to graduate without having passed exams in basic subjects could leave them unprepared to compete in an economy that increasingly requires a postsecondary degree or credential.

SUBJECT: Creating a defense to prosecution for those calling 911 for drug overdoses

COMMITTEE: Public Health — favorable, without amendment

VOTE: 11 ayes — Klick, Guerra, Allison, Campos, Coleman, Collier, Jetton, Oliverson, Price, Smith, Zwiener

0 nays

WITNESSES: For — Cedrick Mattli, Texas A&M Student Government Association; Devin Driver, Texas Criminal Justice Coalition; Sandra Sosa; (*Registered, but did not testify*: Jamaal Smith, City of Houston, Office of the Mayor Sylvester Turner; M. Paige Williams, for Dallas County Criminal District Attorney John Creuzot; Dustin Cox, GRAV; Troy Alexander, Texas Medical Association)

Against — Jorge Renaud, LatinoJustice; (*Registered, but did not testify*: Susana Carranza; Vanessa MacDougal)

On — Matthew Lovitt, National Alliance on Mental Illness Texas; Cate Graziani, Texas Harm Reduction Alliance; Shannon Hoffman, The Hogg Foundation for Mental Health; Claire Zagorski; (*Registered, but did not testify*: Elias Lang Cortez, Texas Harm Reduction Alliance)

BACKGROUND: Health and Safety Code, ch. 481 is the Texas Controlled Substances Act. It categorizes illegal substances into penalty groups and provides penalties for the manufacture, delivery, and possession of controlled substances. The act also establishes punishments for substances that are not listed in penalty groups but are listed in schedules, which are lists of controlled substances maintained under Health and Safety Code sec. 481.032.

DIGEST: HB 1694 would create a defense to prosecution for certain drug offenses for individuals seeking medical assistance for another person who may be experiencing a drug overdose and for the victim of the possible overdose.

The defense would apply to multiple Health and Safety Code drug offenses relating to possession of up to four ounces of marijuana and

small amounts of drugs in Penalty Groups 1, 1-A, 2, 2-A, 3, and 4. It also would apply to controlled substances listed in a schedule but not in a penalty group, drug paraphernalia, a dangerous drug without a prescription, and certain actions relating to abusable volatile chemicals.

The defense would be available to an individual who:

- was the first person to request emergency medical assistance in response to the possible overdose of another and made the request during an ongoing medical emergency, remained on the scene until the medical assistance arrived, and cooperated with medical assistance and law enforcement personnel; or
- was the victim of a possible overdose and the request was made by the victim or another person during an ongoing medical emergency.

The defense to prosecution would not be available if:

- at the time of the request, a peace officer was arresting the individual or executing a search warrant describing the person or place where the request for medical assistance had been made;
- at the time of the request, the individual was committing another crime, other than the ones that would be covered by the newly established defense to prosecution;
- the individual had been previously convicted of or placed on deferred adjudication community supervision for an offense under the Texas Controlled Substances Act, Texas Dangerous Drug Act, or offense related to abusable volatile chemicals; or
- the individual had been acquitted in a previous proceeding by successfully establishing a defense to prosecution that would be established by the bill.

The defenses to prosecution established by the bill would not preclude the admission of evidence obtained by law enforcement that resulted from the request for help if the evidence pertained to an offense other than one for which the newly created defenses could be used.

The bill would take effect September 1, 2021, and would apply to an offense committed on or after that date.

SUPPORTERS SAY:

HB 1694 would help reduce drug overdose-related deaths in Texas by giving legal protections to certain individuals who call for emergency medical assistance in response to another's drug overdose and for the person who needs aid.

Drug overdoses are a serious problem in Texas and the frequency of overdoses has increased during the COVID-19 pandemic. Many overdose deaths could be prevented with quick and appropriate medical treatment. However, fear of arrest and prosecution can prevent people witnessing an overdose from calling 911. HB 1694 would address this by establishing legal defenses to criminal drug prosecution in certain situations, thereby encouraging those best positioned to seek emergency care to help those in danger of an overdose.

These types of laws, sometimes called Good Samaritan laws, have been shown to decrease overdose-related deaths, and Texas would join about 40 other states with similar laws. Texas has a law similar to HB 1694 that gives protections to minors who seek emergency medical assistance for a possible alcohol overdose, and those involved with potential drug overdoses should have similar protections.

In response to the governor's veto of a bill similar to HB 1694 in 2015, this bill is narrowly drawn and would apply only to possession of small amounts of marijuana, controlled substances and other drugs, abusable volatile chemicals, and drug paraphernalia. The bill includes provisions to ensure it would not be misused by drug dealers, those possessing large quantities of controlled substances, or those with repeated drug offenses. Other provisions ensure the bill would not interfere with law enforcement activities by making the defenses not apply when certain other offenses were being committed or during the execution of a search warrant. These provisions establishing when HB 1694 would not apply are a reflection of collaboration with the Governor's Office to ensure that HB 1694 does not result in a veto and are an effort to create an acceptable Good Samaritan law for Texas. It would establish a pathway to prevent many overdoses

deaths, and Texas should continue to work on all possible fronts to prevent as many overdoses as possible.

CRITICS SAY:

While the Texas needs a Good Samaritan bill, the defenses to prosecution that would be established in HB 1694 are too narrowly drawn and would limit the effectiveness and fairness of the bill. The state should encourage all those witnessing or experiencing an overdoses to call 911 and let them focus on saving a life rather than place them in a situation where they have to choose between helping someone and possible arrest.

It is unfair and unsafe for the bill to make the defense unavailable to those with previous drug-related convictions or probation. The lives of these individuals and those around them should be valued the same as others who would be able to use the defenses in the bill. Such a restriction could reinforce and exacerbate racial disparities in the criminal justice system and in access to health care.

Relapse is common with substance abuse and limiting the defenses to being used once could place those struggling to overcome addiction in danger of legal consequences if they call to save a life a second time. It also is potentially dangerous to limit the defense to the first person who calls for help. If multiple people witness an overdose, all of them should have an incentive to seek help.

SUBJECT: Limiting the effect of certain judicial admissions on modification orders

COMMITTEE: Juvenile Justice and Family Issues — favorable, without amendment

VOTE: 9 ayes — Neave, Swanson, Cook, Frank, Leach, Ramos, Talarico, Vasut, Wu

0 nays

WITNESSES: For — Bill Morris, Texas Family Law Foundation; (*Registered, but did not testify*: Amy Bresnen, Steve Bresnen, and David Kazen, Texas Family Law Foundation; Meagan Corser, Texas Home School Coalition; Thomas Parkinson)

Against — (*Registered, but did not testify*: David OConnor)

On — Taran Champagne

BACKGROUND: Family Code sec. 8.057 governs the modification of a spousal maintenance order. Under this section, a court may modify an original or modified order or portion of a decree providing for maintenance after a hearing and on a proper showing of a material and substantial change in circumstances.

Under Family Code ch. 156, subch. A, a court with continuing, exclusive jurisdiction may modify an order that provides for the conservatorship, support, or possession of and access to a child.

DIGEST: HB 851 would specify that a person who filed a motion to modify certain orders issued under the Family Code based on a material and substantial change of circumstances could not be considered on that basis alone to have admitted a material and substantial change of circumstances regarding any other matter.

This would apply to a motion to modify spousal maintenance, as well as a motion to modify an order that:

- provided for the appointment of a conservator of a child;
- provided the terms and conditions of conservatorship;
- provided for the possession of or access to a child; or
- provided for the support of a child.

The bill would take effect September 1, 2021, and would apply only to a motion to modify that is filed on or after the effective date.

SUPPORTERS SAY:

HB 851 would protect individuals in family law cases who filed a motion to modify a court order due to a material change in their circumstances from consequences in other court proceedings.

Individuals' circumstances sometimes change, and court orders and divorce decrees may need to be modified in response. However, modifications to one order or in one case should not be taken as an admission of changed circumstances for other orders or cases. For example, a parent who alleged a material change in regard to an order for child support should not be considered to have admitted to an issue that would affect their access to their child.

The bill would clarify that a person who filed a motion to modify an order in certain family law cases, including those related to spousal maintenance, child support, and child possession or conservatorship, due to a change in circumstances would not be making a judicial admission in another proceeding.

CRITICS SAY:

No concerns identified.